

1962

In the matter of Arthur Levison and Levison and Company: file no. 4-99: Rules of practice - rule 2(e): Findings and opinion of the Commission

United States. Securities and Exchange Commission

Follow this and additional works at: https://egrove.olemiss.edu/acct_fed

Part of the [Accounting Commons](#), and the [Taxation Commons](#)

Recommended Citation

United States. Securities and Exchange Commission, "In the matter of Arthur Levison and Levison and Company: file no. 4-99: Rules of practice - rule 2(e): Findings and opinion of the Commission" (1962). *Federal Publications*. 171.
https://egrove.olemiss.edu/acct_fed/171

This Article is brought to you for free and open access by the Accounting Archive at eGrove. It has been accepted for inclusion in Federal Publications by an authorized administrator of eGrove. For more information, please contact egrove@olemiss.edu.

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.
July 20, 1962

In the Matter of	:	
ARTHUR LEVISON	:	FINDINGS AND
and	:	OPINION OF
LEVISON AND COMPANY	:	THE COMMISSION
File No. 4-99	:	
Rules of Practice - Rule 2(e)	:	

ACCOUNTING - PRACTICE AND PROCEDURE

Denial of Privilege to Practice Before Commission

Where certified public accountant certified materially false and misleading financial statements including statements filed with the Commission and stated in his certificates that he had examined the companies' financial accounts and records and that such examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and other auditing procedures as he considered necessary under the circumstances, when in fact he had not even seen the companies' books and records but relied instead entirely on statements which another certified public accountant either had prepared or the accountant assumed he had prepared; and he was not independent with respect to the company whose financial statements were filed with the Commission, held, accountant engaged in unethical and improper professional conduct and will be denied privilege of practicing before the Commission.

APPEARANCES:

Ellwood L. Englander, Theodore H. Focht and George P. Michaely, Jr.,
of the Office of the General Counsel, for the Office of the Chief Account-
ant of the Commission.

Louis Schultz, for respondent.

- - - - -

PER CURIAM:

The question before us is whether Arthur Levison, a certified public accountant who at times relevant here practiced accounting in New York under the name Levison and Company, should be denied, temporarily or permanently, the privilege of appearing or practicing before this Commission, pursuant to Rule 2(e) of our Rules of Practice. 1/

After a private hearing, our staff and respondent filed proposed findings and briefs, and the hearing examiner submitted a recommended decision in which he recommended that Levison be denied the privilege of practicing before this Commission in the future. Respondent filed exceptions and we heard oral argument.

This proceeding is another outgrowth of the investigations relating to Cornucopia Gold Mines ("Cornucopia") and Eastern Investment and Development Corporation ("Eastern"), an affiliated company. 2/ In 1957 Cornucopia and Eastern, which had acquired a substantial amount of Cornucopia stock, were both controlled by Murray Talenfeld, Burton Talenfeld and Earl Belle. Levison was a salaried employee of Frank Proctor & Associates, Inc. ("Proctor Associates"), and had performed work in connection with the books and records of two companies located in Long Island, New York, Century Controls Corp. ("Century") and Carl W. Schutter Corp. ("Schutter Corp."), which were being managed by Proctor Associates. Near the end of that year Cornucopia acquired control of five companies, including Century and Schutter Corp., from a group of sellers which included Proctor Associates. Levison was retained as an employee of the Cornucopia group, performing work for Century and Schutter Corp. and drawing a salary from these companies. Levison also served as a director of Century for several months prior to December 1957. Early in 1958, Levison, at Belle's request, agreed to certify certain financial statements of Cornucopia. Thereafter, in addition to fees from Cornucopia, he continued to receive monthly compensation from Century and Schutter Corp. for services such as furnishing monthly reports and financial advice to the management of those companies and advising and assisting their book-keeping staffs.

Levison certified materially false and misleading financial statements of Cornucopia as of December 31, 1957. These statements were filed with us in May 1958 as part of Cornucopia's annual report for 1957 pursuant to Section 13(a) of the Securities Exchange Act of 1934. In addition, he certified two financial statements of Eastern, one as of January 31, 1957, and the other as of April 30, 1957, which also contained materially false and misleading information.

The Cornucopia certificate stated "We have examined the financial accounts and records of the Pittsburgh office of Cornucopia" and referred to a report of an examination of Cornucopia's Spokane office by another firm of certified public accountants, which was attached. The Eastern certificates stated "We have audited the books and records of Eastern." Each certificate included the recital that "Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances."

In fact, as Levison admits, he had made no audit of, nor had he ever seen, the books and records either of Cornucopia or of Eastern. The Cornucopia statements certified by him were copied, with some figure and wording changes, from statements prepared and certified by Myron Swartz, another accountant. The Eastern statements certified by Levison were copied from unsigned draft statements given to him by Belle. Levison testified that he was under the impression that these statements had also

2/ In Cornucopia Gold Mines, Securities Exchange Act Release No. 6339 (August 11, 1960), we found it necessary for the protection of investors to withdraw the registration on the American Stock Exchange of Cornucopia's stock. Disciplinary proceedings against other accountants who performed services for Cornucopia and Eastern are described in Myron Swartz, Accounting Series Release No. 88 (May 24, 1961), and Morton I. Myers, Accounting Series Release No. 92 (July 20, 1962).

been prepared by Swartz after an examination of Eastern's books, although he did not know whether Swartz had made any audit.

The facts set out above demonstrate that Levison's certifications constituted improper and unethical professional conduct on each of two grounds:

First, Levison was disqualified under Rule 2-01.(b) of our Regulation S-X 3/ from certifying the financial statements of Cornucopia since he was not in fact an independent public accountant with respect to Cornucopia. The services performed by Levison for Century and Schutter indirectly through Proctor Associates and thereafter, following the acquisition of these companies by Cornucopia, directly, were not of a character which would support a finding that Levison was, in fact, independent with respect to Cornucopia within the meaning of our rule. This conclusion is buttressed by Levison's own testimony (referred to hereafter) indicating that he was subject to the dominant influence or direction of Belle and the Talenfelds.

Second, Levison certified the Cornucopia and Eastern financial statements without having audited or seen the books and records of either company. In defense of this flagrant violation of our rules and the standards of his profession, he asserts that he believed in good faith that proper audits had been made by Swartz, that the financial statements were true and correct, that he was not aware that the financial statements were false and misleading and that accordingly he was entitled, under Rule 2-05 of our Regulation S-X and Rule 6 of the Rules of Professional Conduct of the American Institute of Certified Public Accountants (A.I.C.P.A.), to rely on examinations made by Swartz, a certified public accountant. Such a defense is without merit because it rests upon a basic misconstruction of the cited rules.

Our Rule 2-05 provides that where "the principal accountant relies on an examination made by another independent public accountant of certain of the accounts" of the concern whose financial statements are being certified, the certificate of such other accountant need not be filed if no reference is made to such other accountant's examination or, where such reference is made, if "the principal accountant" states in his certificate that he assumes full responsibility for such examination. Aside from the fact that the rule is not available to an accountant who is not himself independent, it is obvious that the rule speaks with reference to a situation where the principal accountant under whose supervision and control an audit is being made relies to a limited extent on an examination by another independent public accountant of "certain of the accounts."

It is not necessary in this case to fix the limits of the extent of permissible reliance because Levison did not examine any of the accounts of either Cornucopia or Eastern. Furthermore, Levison had no control or supervision over any examination in fact made by Swartz. On the contrary, he referred to Swartz as his superior and to himself as

3/ Rule 2-01(b) of our Regulation S-X provides that an independent public accountant must be independent in fact, and it specifically recites that an accountant will not be considered independent with respect to any company if he is, or was during the period of the report, connected with the company or its subsidiaries as an employee.

having been under the supervision of Swartz. 4/ Accordingly, Levison was not the "principal" accountant permitted by our rule to rely on the examination of another independent public accountant. In our opinion, Rule 6 of the A.I.C.P.A. 5/ provides no greater support for the defense asserted by Levison than does our Rule 2-05. It would strip all use and meaning from a certification to construe this rule as sanctioning a practice whereby an accountant having no participation in, or control or supervision of, an audit may nevertheless certify statements prepared and examined entirely by another accountant. We construe Rule 6 to require responsible supervision and control of the audit on the part of the certifying accountant. 6/

-
- 4/ In addition to certifying the financial statements of Cornucopia filed as a part of its annual report on Form 10-K, Levison also certified the financial statements of various of Cornucopia's subsidiaries, including Century and Schutter Corp., which were included in Cornucopia's proxy material filed with us in May 1958 pursuant to Section 14 of the Securities Exchange Act. Those statements had been copied from statements which Levison understood had been prepared by Swartz, with however several changes showing higher cash figures or omitting contingent liabilities. Although Levison had performed no work at all in connection with the Cornucopia and Eastern statements, Swartz delegated to him certain tasks with respect to the preparation of the statements of the subsidiaries and he states that he worked under Swartz's supervision in preparing the statements of Century and Schutter Corp. With respect to the differences between the financial statements of the subsidiaries as prepared by Swartz and as certified by him, Levison asserts that the changes were given to him by Swartz and that he made such changes in reliance on Swartz without any knowledge that they were false or misleading. As to the deficiencies in the statements for the subsidiaries, see Cornucopia Gold Mines, Securities Exchange Act Release No. 6339, pages 13-14. Although Levison's certification of the statements of the subsidiaries is not put in issue by the order for proceedings, it is clear from our discussion above that Levison's examination of certain of the accounts under the supervision of Swartz as the principal accountant would not under Rule 2-05 justify Levison's certification of the statements of the subsidiaries.
- 5/ At all pertinent times that rule provided: "A member shall not sign a report purporting to express his opinion as the result of examination of financial statements unless they have been examined by him, a member or an employee of his firm, a member of the Institute, a member of a similar association in a foreign country, or a certified public accountant of a state or territory of the United States or the District of Columbia."
- 6/ The attitude of the accounting profession itself is indicated by the statements of John L. Carey, then Executive Director of the A.I.C.P.A., that "Rule number 6 serves to put the public on notice that when the name of a member of the Institute appears, it may safely be assumed that he has supervised the work and assumes responsibility for it." Carey, Professional Ethics of Certified Public Accountants, p. 104 (1956). And compare our statement in Red Bank Oil Company, 21 S.E.C. 695, 702 (1946): "We doubt the propriety of the principal accountant undertaking to express his opinion with respect to financial statements when, as to so large a percentage of the revenues and assets, his opinion is founded merely on the reports of other accountants not subject to his supervision, control or direction." In that case the principal accountant relied on another accountant's report for a unit of the business which accounted for about 45 percent of the assets. This is to be contrasted with the present case, where Levison not only relied on Swartz's reports with respect to all of the assets of Cornucopia and Eastern, but he was not in any respect "the principal accountant."

It should be emphasized that reliance on either rule in connection with Levison's certification of the Eastern statements is scarcely more than frivolous since these statements were prepared by Levison on the basis of unsigned drafts given to him by Belle.

Conclusions

Having found that Levison engaged in improper and unethical conduct, we must determine what sanction is appropriate under all the circumstances. In this connection, consideration may appropriately be given to the fact that Levison knew, at the time he was requested to certify the Cornucopia statements, that these statements were to be filed with this Commission. Further, his testimony demonstrates that he was not independent of Cornucopia's management: When he was asked by Belle to certify, Levison felt that he was disqualified for several reasons and that Swartz was the accountant who should make the certification. He was "not at all happy about it" and preferred not to make the certification. Nevertheless, relying on the assurances of Belle and the Talenfelds that "it was all right" and upon Belle's statement that "it was an honor to present the statement to the S.E.C. and he would prefer that Levison get that honor," Levison allowed himself to be persuaded or directed to make the certifications. He then prepared these statements on his own stationery labelling each page with the number of our form and the number of the appropriate Commission rule under which the filings were made with us.

Respondent asserts that this was his first experience in an auditing engagement and he believed he was justified in certifying statements examined by Swartz who in effect was his superior; that he has never been in difficulty before and has an excellent reputation in his community; and that he has cooperated with our staff and voluntarily appeared and testified fully in the Cornucopia investigation. He states that he has learned his lesson and that he and his family have already suffered through adverse publicity and financial hardship and urges that any further sanction should be limited to at most a temporary suspension of his right to practice. We do not find these arguments persuasive.

We have carefully considered all the factors cited by respondent, as well as the nature and circumstances of his activities in relation to the Cornucopia and Eastern financial statements.

In our opinion, Levison's conduct constitutes a serious breach of the standards of his profession and of his responsibilities to us and to the public, warranting the denial to him of the privilege of practicing before us.

An appropriate order will issue. 7/

By the Commission (Chairman CARY and Commissioners FREAR and WHITNEY), Commissioners WOODSIDE and COHEN not participating.

Orval L. DuBois
Secretary

7/ We have considered the recommended decision of the hearing examiner and the exceptions thereto, and to the extent such exceptions involve issues which are relevant and material to the decision of this case, we have by our Findings and Opinion herein ruled upon them. We hereby expressly sustain such exceptions to the extent that they are in accord with the views set forth herein, and we expressly overrule them to the extent that they are inconsistent with such views.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
July 20, 1962

In the Matter of	:	
ARTHUR LEVISON	:	
and	:	ORDER DENYING
LEVISON AND COMPANY	:	PRIVILEGE OF
	:	PRACTICING
File No. 4-99	:	BEFORE THE
	:	COMMISSION
Rules of Practice - Rule 2(e)	:	

Proceedings having been instituted pursuant to Rule 2(e) of the Commission's Rules of Practice to determine whether Arthur Levison, a certified public accountant, should be denied the privilege of practicing before the Commission;

A private hearing having been held, proposed findings, briefs, a recommended decision by the hearing examiner and exceptions thereto having been filed and the Commission having heard oral argument;

The Commission having this day issued its Findings and Opinion, on the basis of said Findings and Opinion

IT IS ORDERED, pursuant to Rule 2(e) of the Rules of Practice, that Arthur Levison be, and he hereby is, denied the privilege of practicing before the Commission.

By the Commission.

Orval L. DuBois
Secretary